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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Ex Parte Presentation in MM Docket No. 92-266

Dear Mr. Caton:

Attached is a copy of a letter sent to Jay Atkinson, Office of Plans and Policy, on behalf of QVC Network, Inc. concerning the treatment of increases in programming costs and revenue for purposes of external cost pass-throughs.

Sincerely,

Michele Pistone

Michele R. Pistone

Attachment

cc: Alexandra Wilson
Patrick Donovan
Jay Atkinson

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Mr. Jay Atkinson
Office of Plans & Policy
Room 822
1919 M Street, N.W.
Washington, DC 20036

Dear Jay:

On behalf of QVC Network, Inc., a home shopping programming network, we are writing to seek clarification in connection with the FCC's regulatory treatment of increases in programming costs and revenue for purposes of external cost pass-throughs. More specifically, we seek confirmation that the rule established in footnote 602 of the Rate Order[1] does not apply to home shopping channels and the revenues that cable operators earn from their affiliation with such networks.

Footnote 602 of the Rate Order states that:

> any revenue received from a programmer, or shared by the programmer and the operator, for carriage of signals be netted against costs for purposes of calculating whether there has been an increase or decrease in programming costs for the programmer.

As we understand this requirement, revenue from programming on an individual channel is to be factored into the pass-through calculation solely in order to offset programming cost increases for that channel. That is, the

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[1] See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, 8 FCC Rcd 5631 (1993).

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rules do not contemplate changes in permitted rates as a result of changes in revenues flowing from non-subscriber sources unless the cable operator attempts to pass through above-inflation programming costs. Even in those circumstances, any offset would occur on a channel by channel, rather than tier by tier basis. Under this rule, cable operators would be foreclosed from entering into "side payments" with affiliated programmers, but would be able to pass through true increases in programming costs so that the regulations do not disaffect programming quality incentives. Revenues from home shopping, however, are not implicated in this framework.

The alternative reading would have very negative effects for consumers, cable programmers and cable operators. If home shopping revenues were included in the FCC's required calculations, cable operators would have no incentive to carry shopping channels on regulated tiers, since any increased revenues earned would be required to "offset" cost increases for other channels. Particularly in light of increased interactivity and its innovative applications, including electronic retailing, this outcome would be unfortunate.

Moreover, if the FCC were to require the pass-through mechanism to account for such revenue increases, it would necessarily have to allow the mechanism to account for decreases in this type of revenue. The very odd result of this would be to permit cable operators who end their affiliation with home shopping channels to recover any foregone revenues through increased subscriber rates -- certainly not a result mandated nor encouraged by the 1992 Cable Act.[2]

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[2] It bears noting that many of these same problems apply to advertising-supported programming networks. QVC's letter is addressed solely to home shopping revenue, but in limiting our letter we do not mean to suggest that the rule is not problematic as applied to other types of channels.

Based on the foregoing, we seek confirmation that the initial construction described above is the correct one. Please understand that the ambiguity created by the footnote has already caused substantial confusion with our cable operator affiliates, and thus we hope that the Commission or its staff will be able to promptly address this issue.

Respectfully submitted,

Michele R Pistone

Sue D. Blumenfeld
Michele Pistone

cc: Alexandra Wilson
Patrick Donovan